Ontario Civilian Police Commission 2010 Annual Report

Ontario Civilian Police Commission

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The Honourable Jim Bradley
Minister of Community Safety and Correctional Services
18th Floor, 25 Grosvenor Street
Toronto, Ontario
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Dear Minister:

On behalf of Murray W. Chitra and pursuant to the Memorandum of Understanding with the Ministry, I am pleased to forward the Annual Report of the Ontario Civilian Police Commission for the calendar year ending December 31st, 2010.

Yours truly,

David C. Gavsie
Chair

Chair's Message

On behalf of Murray W. Chitra who was Chair in 2010, I am pleased to report on activities during that calendar year.

During 2010, the Commission released eight decisions. These related to police discipline, employment status, budgets and restructuring. Full texts of these decisions can be found on our website at www.ocpc.ca.

The Commission received a number of requests to initiate investigations and 254 requests to review decisions made by police services with regard to public complaints about police officer conduct, and police policies and services under the previous version of the *Police Services Act*.

I would like to reaffirm the Commission's commitment, as demonstrated through 49 years of responsive public service, to ensure the proactive oversight of police services and police services boards across Ontario.

Yours truly,

David C. Gavsie
Chair

Mission Statement

The Ontario Civilian Police Commission (the "Commission") is an independent oversight agency committed to serving the public by ensuring that adequate and effective policing services are provided to the community in a fair and accountable manner.

Mandate

The Commission's legislative authority is set out in the *Police Services Act*, R.S.O. 1990, c. P.15, as amended, (the *"Act"*) and the *Interprovincial Policing Act*, R.S.O. 2009, c. 30.

Commission Values

Fairness – The provision of service and performance of statutory functions in an impartial, lawful, unbiased and just manner.

Accessibility – The ability to provide information and services that are simple and easy to use.

Timeliness – The performance of tasks within established time frames based on reasonable expectations.

Quality and Consistency – The production of accurate, relevant, dependable, understandable and predictable information and results, with no errors in law or fact.

Transparency –The use of policies and procedures that are clear and understandable to everyone involved.

Expertise – The possession and use of the skill, knowledge and technical competence required to discharge all statutory responsibilities and maintain public confidence.

Optimum Cost – The provision of services at a cost that is based on best practices and is cost effective for everyone involved.

Courtesy – The demonstration of respect to everyone who works in and/or comes into contact with the agency.

Role of the Commission

Mandate

The Commission is an independent oversight agency of the Ministry of Community Safety and Correctional Services, which reports administratively to the Minister.

The Commission is responsible for ensuring that adequate and effective police services are provided throughout Ontario. Its oversight powers are an important element of the civilian governance structure set out in the *Act*. To ensure compliance with the *Act*, the Commission has the authority to investigate policing related matters, hold different types of hearings and make recommendations with regard to the delivery of police services in a community.

Police services and police services boards are ultimately accountable to the public through the Commission.

Appeals

The Commission hears appeals of decisions at police disciplinary hearings concerning complaints about police conduct made by members of the public or initiated by chiefs of police. The hearings are called by a chief of police and are presided over by a hearing officer who is a police officer, a former police officer, a judge or former judge.

A public complainant and a police officer each have the right to appeal to the Commission in writing within 30 days of receiving notice of the decision at a disciplinary hearing. After hearing the appeal, the Commission may:

- confirm, vary or revoke the decision of the hearing officer;
- substitute its own decision; or
- where the complaint is related to events occurring after October 19, 2009, it may also order a new hearing.

In fulfilling its appellate role, the Commission ensures that the decision of the hearing officer is based on facts established by the evidence at the hearing, and reflects the proper application of the law.

Investigations and Inquiries

The Commission may investigate and inquire into the administration of a municipal police service, the manner in which policing services are being provided, and the policing needs of a municipality. The Commission may be directed by the Lieutenant Governor in Council to hold an inquiry into any matter relating to crime or law enforcement. As well, the Commission may independently investigate and inquire into the conduct or work performance of police officers, chiefs of police, members of local police services boards, auxiliary members of a police service, special constables and municipal law enforcement officers.

Hearings

As a quasi-judicial body, the Commission has specific authority to hold different types of hearings to ensure compliance with the *Act*. The Commission:

- decides disputes between local police services boards and municipal councils about annual police budgets;
- approves the restructuring of municipal police services;
- determines whether or not a disabled member of a police service has been accommodated;
- rules on disputes about membership in municipal police bargaining units; and
- rules on whether or not prescribed standards of police services are being met.

Approvals

The Commission approves the appointment of First Nations constables to perform specified duties in designated geographical areas.

Public Complaints

The Commission has responsibility for overseeing public complaints about police conduct, policies and services provided by a police service where the complaints are related to events which occurred prior to October 19, 2009. The Commission continues to complete outstanding public complaint review files.

The process for dealing with such matters is as follows. Members of the public, who are not satisfied with a local police decision about their complaints, may ask the Commission to review the matter.

When conducting a review, the Commission receives the complaint file from the police service as well as submissions from the complainant. A Commission case manager will analyze the file and prepare a case summary to present to a review panel of Commission members.

The panel may:

- confirm the decision of the Chief of Police/OPP Commissioner;
- refer the matter back to the involved police service or another police service for further investigation;
- find misconduct of a less serious nature; or
- order a disciplinary hearing.

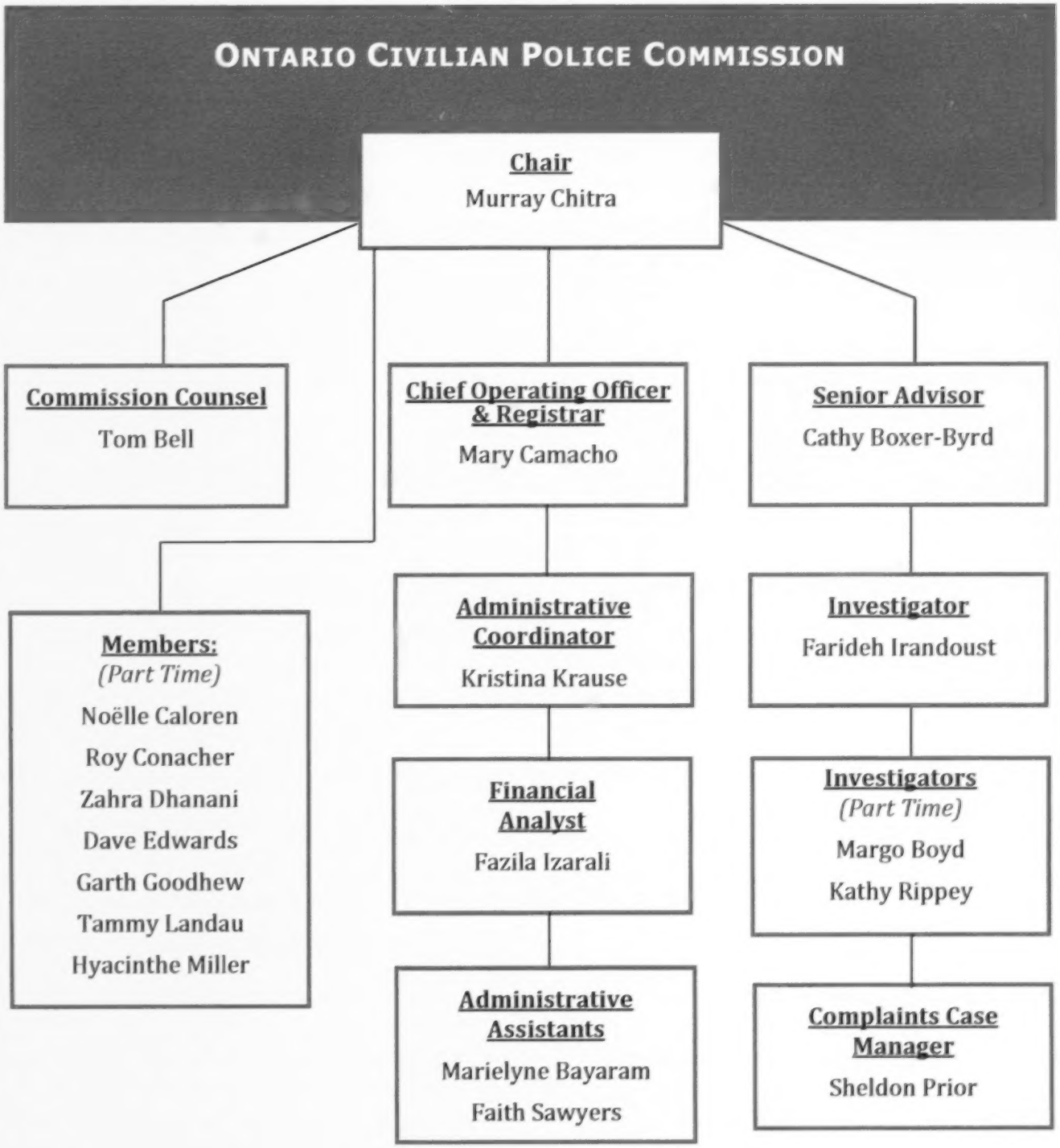
Commission: The Organization

The Commission is made up of a full-time Chair and seven part-time members.

Members are appointed by Order-in-Council for terms of two, three and five years, and represent a diverse cross-section of professions and Ontario communities. They have extensive backgrounds in law, education, community advocacy, human rights, corrections, victims' rights, and criminal and aboriginal justice. Members are supported in their role by advisory, legal, investigative and administrative Commission staff.

In addition to attending regular monthly meetings at the Commission's Toronto office, members sit on panels to review how local police services have classified and investigated public complaints about police conduct and police policies and services. Commission members also preside at a range of hearings, including disciplinary appeals.

Organizational Chart 2010



Members of the Commission

Murray W. Chitra – Chair

Prior to his appointment as Chair of the Commission, Mr. Chitra was the Legal Director of the Ontario Insurance Commission (OIC) for four years. As well, Mr. Chitra worked for ten years with the Legal Services Branch of the Ministry of Correctional Services assigned for six years as Legal Director. He was called to the bar in Ontario in 1980. Mr. Chitra is the former President of the Society of Ontario Adjudicators and Regulators (SOAR) and a member of the Board of the Council of Canadian Administrative Tribunals (CCAT).

Noëlle Caloren – Member

Noëlle Caloren is a lawyer who was called to the Ontario Bar in 1995. She practices law in a large national Canadian law firm. With a background in general litigation, Ms. Caloren has developed an expertise in employment and labour law, human rights and education law matters. Over the last six years, Ms. Caloren has taught Civil Procedure at the Bar Admission Course of the Law Society of Upper Canada. She is also a contributing author to a comprehensive employment law text Employment Law – Solutions for the Canadian workplace. Ms. Caloren is fluently bilingual.

Roy B. Conacher – Member

Roy B. Conacher is a senior partner with an eastern Ontario law firm. He was called to the Bar in 1971 and after practicing in Toronto for several years moved to eastern Ontario. He has served on many boards and tribunals during his career including appointments as Co-Chair, Ontario Psychiatric Review Board; Regional Vice-Chair, Ontario Consent & Capacity Board; Independent Chairperson, Federal Penitentiaries Act; and Deputy Judge (Small Claims Court). Mr. Conacher has also served as a Municipal Councillor; as Chair of the Professional Division, Eastern Ontario United Way Campaign; and a Director of a local Rotary Club. His practice now concentrates on real estate development and municipal law.

Zahra Dhanani – Member

Zahra Dhanani is the legal director of a prominent women's organization. Called to the Bar in 1999 after studying at Osgoode Hall Law School and receiving her LL.B., Ms. Dhanani is currently completing her LL.M. in Alternative Dispute Resolution with a focus on restorative justice. During her legal career, Ms. Dhanani has worked at various community legal clinics, run her own law practice and has participated in various social justice projects. She has specialized in mediation, human rights and immigration/refugee law.

Dave Edwards – Member

Dave Edwards has been a partner in a Niagara Region law firm since 1978 practicing primarily in the areas of corporate and commercial law. During his professional career he has served on a number of community organizations and held a number of positions, including: Chair of the Board of Trustees of Brock University, President of the United Way of his Municipality and District, Member of the Niagara District Airport Commission, and a Member of the Boards of Directors of The Alzheimer Society of Niagara, and the Rotary Club.

Garth Goodhew – Member

Garth Goodhew spent most of his professional career in secondary education in Northern Ontario serving 23 years as a Principal. Throughout his career he served on a variety of boards and agencies, was a member of City Council and chaired the National Candidature Committee of the United Church of Canada. He received the Queen's Silver Jubilee Medal for community service. After leaving secondary education Garth completed 6 years as a Board member in the Ontario Region of the National Parole Board. He is a Board Member of the North Bay Recovery Home.

Tammy Landau – Member

Tammy Landau is Associate Professor in the School of Criminal Justice at Ryerson University. She has a PhD in criminology from the Centre of Criminology at the University of Toronto, and has been involved in a wide range of community projects and agencies. Dr. Landau has been a consultant to federal, provincial and local governments on a variety of justice issues. Her research interests include policing, Aboriginal justice and victimology.

Hyacinthe Miller – Member

Following graduation from university, Ms. Miller worked in the private sector and for the federal and provincial governments in Ontario. She has also been active in various community agencies. During her career, Ms. Miller has been a senior manager, a technology consultant and general advisor to federal and provincial government ministries and central agency officials, law enforcement agencies and civilian oversight organizations. Currently an organizational development consultant, Ms. Miller is also the former Executive Director of the Canadian Association for Civilian Oversight of Law Enforcement.

Commission Budget

The annual budget for the Commission for the calendar year 2010 was $1,679,900.90.

The following is a breakdown of the budget:

ITEM	ALLOCATION ($000)
Salaries & Wages	1,457.70
Employee Benefits	151.90
Transportation & Communications	37.80
Services	23.30
Supplies & Equipment	9.20
Other	1.00
Total	**1,679.90**

Outreach

Each year, the Commission actively engages police officers and civilian staff of police services and police services boards in discussions about their roles in police governance and civilian oversight. The ultimate goal is to ensure understanding of the Commission's mandate.

Staff lend their time and expertise in promoting general awareness of legislative requirements and specific operational responsibilities. Opportunities for open dialogue – both formal and informal – include annual conferences/zone meetings of the Ontario Association of Chiefs of Police, Ontario Association of Police Services Boards and the Police Association of Ontario.

The Commission is regularly invited to participate in ongoing education and training programs offered by the Ontario Police College and the Ontario Provincial Police Training Academy. Presentations are made to Professional Standards officers as well as senior officers and legal staff who have investigative and administrative responsibilities within the complaints and appeal processes.

Inquiries, Investigations and Fact-Finding Reviews

Section 25 of the *Act* provides that the Commission may, on its own motion or at the request of the Solicitor General, the Independent Police Review Director, a municipal council or a board, investigate, inquire into and report on,

- the conduct or the performance of duties of a police officer, a municipal chief of police, an auxiliary member of a police force, a special constable, a municipal law enforcement officer or a member of a board;
- the performance of duties of an appointing official under the *Interprovincial Policing Act, 2009*;
- the administration of a municipal police force;
- the manner in which police services are provided for a municipality;
- the police needs of a municipality. R.S.O. 1990, c. P.15, s. 25 (1); 1997, c. 8, s. 17 (1, 2); 2007, c. 5, s. 7 (1); 2009, c. 30, s. 45 (1).

Initiation of a section 25 inquiry is a serious, resource-intensive process with the potential for serious consequences for the members, chiefs of police and police services boards who are involved. The consequences can include demotion, dismissal, suspension or revocation of an appointment.

In 1998 the Commission initiated an innovative approach to addressing issues that were deemed to be of concern, but not falling within the parameters of a full-scale inquiry, the "Fact-Finding Review." This approach continues today.
In 2010, the Commission received several requests to invoke its powers under section 25.

Section 116 Status Hearings

Municipal police forces in Ontario are composed of "members" who are appointed by local police services boards. Section 2 of the *Act* defines "members" to include both police officers and civilian employees.

The *Act* permits members to form associations for the purposes of collective bargaining. Normally, there are two associations: one for officers and civilians, and another for senior officers. Under section 115(2) of the *Act* chiefs and deputy chiefs are excluded from this scheme.

From time to time a dispute arises as to whether or not a particular member should be assigned to the local police association or to the senior officers association. Section 116 of the *Act* sets out a process to resolve such disagreements. It states:

> (1) If there is a dispute as to whether a person is a member of a police force or a senior officer, any affected person may apply to the Commission to hold a hearing and decide the matter.
>
> (2) The Commission's decision is final.

There were no section 116 status matters before the Commission during 2010. The full text of previous section 116 status decisions can be found on the Commission's web site at www.ocpc.ca.

Section 39 Budget Hearing

Police services boards are required to submit their operating and capital estimates annually to municipal council that show, separately, the amounts that will be required to maintain the municipal police force and provide it with the equipment and facilities that it needs to operate, as well as the amount of money required to pay the expenses of the board's operation other than the remuneration of board members.

Upon a review of the estimates, it is the municipal council's responsibility to establish an overall budget for the board.

Section 39(5) of the *Act* states, "If the board is not satisfied that the budget established for it by the council is sufficient to maintain an adequate number of police officers or other employees of the police force or to provide the police force with adequate equipment or facilities, the board may request that the Commission determine the question and the Commission, shall, after a hearing, do so."

There were no section 39 budget matters before the Commission during 2010. The full text of previous section 39 budget decisions can be found on the Commission's web site at www.ocpc.ca.

Police Service Restructuring

Section 40 of the *Act* allows police services boards to terminate the employment of a member of a police force for the purpose of abolishing the force or reducing its size if the Commission consents and if the abolition does not contravene the *Act*.

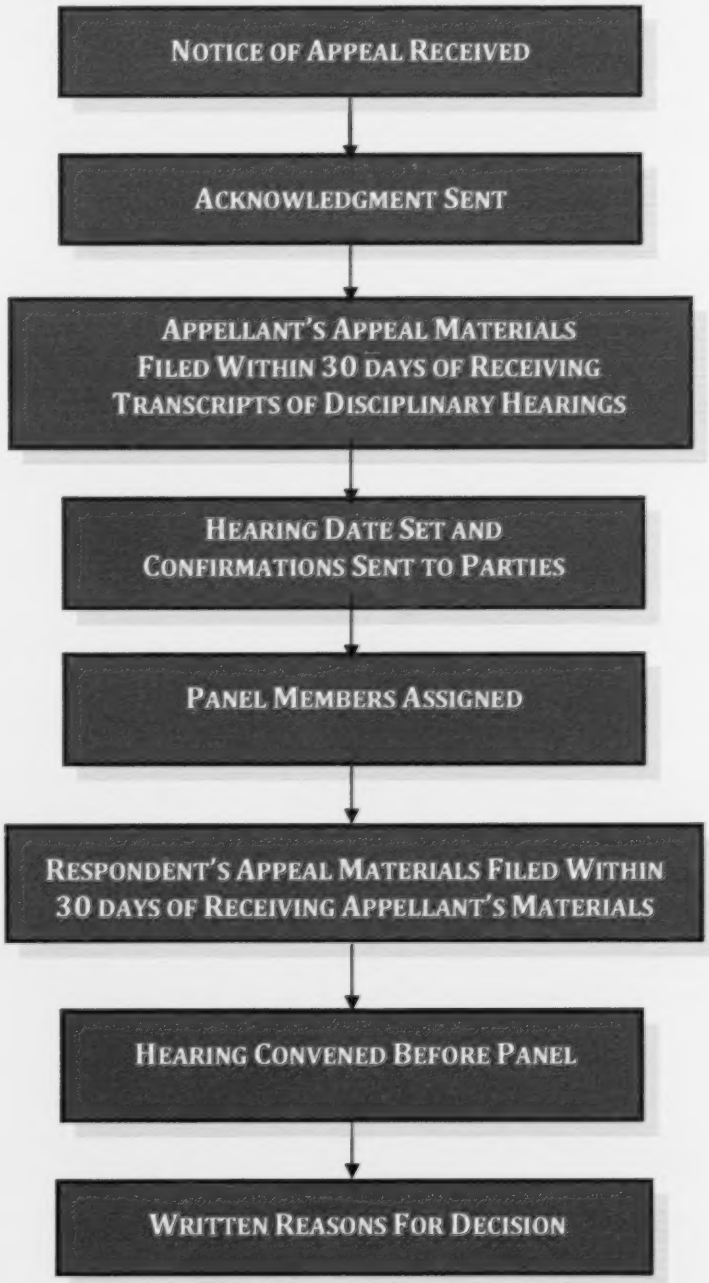
When a municipality requests the approval of the Commission for the disbandment or downsizing of their police service, they must supply the Commission with a copy of a resolution passed by municipal council. The Commission requests a copy of the proposal for the provision of alternative policing services and also ascertains whether severance arrangements have been made with those members whose employment would be terminated if the proposal is accepted.

It is not the Commission's function to judge whether or not what is being proposed is economical or superior to what may already be in place or any other alternative. The Commission's focus is to determine whether the proposed arrangements meet the requirements of the *Act*. It is not the function of the Commission to determine what constitutes appropriate severance arrangements. That is a matter for bargaining between the parties and, in the absence of agreement, for arbitration under the *Act*.

A public meeting is held to hear presentations and receive submissions about the proposal to reduce or disband a municipal police service. Following the completion of the meeting, the Commission considers all of the information provided and renders a written decision.

During 2010, the Commission approved the disbandment of two municipal police services: the Leamington Police Service and the Wawa Police Service. Both services were disbanded in favour of contract policing by the Ontario Provincial Police. The official text of these and previous restructuring decisions can be found on the Commission's web site at www.ocpc.ca.

Disciplinary Appeals Process


Notice of Appeal Received
Acknowledgment Sent
Appellant's Appeal Materials Filed Within 30 days of Receiving Transcripts of Disciplinary Hearings
Hearing Date Set and Confirmations Sent to Parties
Panel Members Assigned
Respondent's Appeal Materials Filed Within 30 days of Receiving Appellant's Materials
Hearing Convened Before Panel
Written Reasons For Decision

Summary of Disciplinary Appeal Decisions

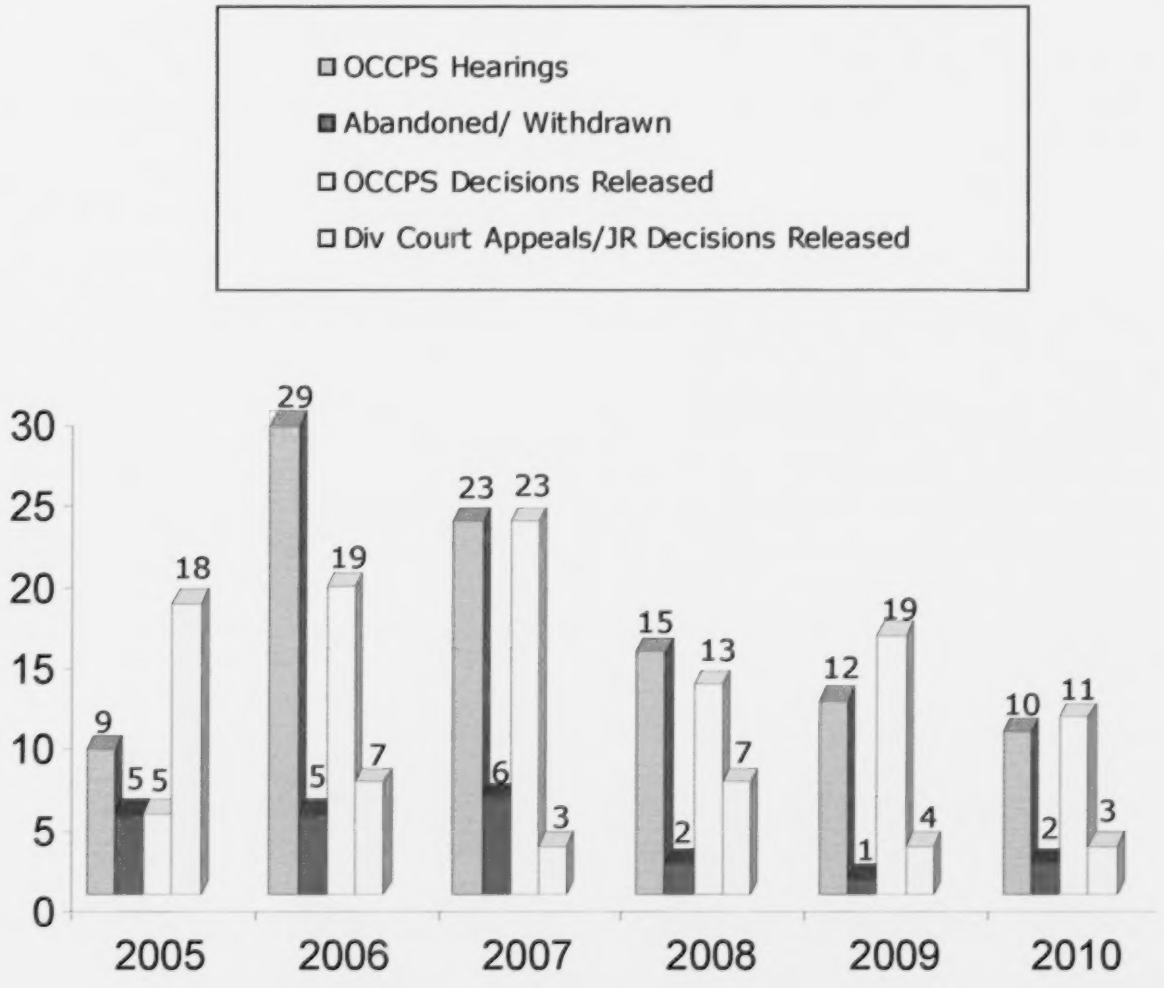
Unlike past years, we are not placing Commission decisions in this year's Annual Report. The official text of the full decisions can be found on the Commission's website at www.ocpc.ca.

During 2010, the Commission heard three disciplinary appeals. An additional three decisions concerned preliminary motions.

The following list identifies the appellant, respondent, the police service and the date and outcome of the decision.

DATE OF DECISION	COMPLAINANT/POLICE OFFICER/POLICE SERVICE	RESULT
January 6, 2010	Pitawanakwat, Crystal Cst., Wikwemikong Tribal Police Service	Motion decision. Motion granted. Appeal quashed.
March 23, 2010	Wiggers, Raymond Sgt., Durham Regional Police Service	Motion decision. Request to lift stay on one year demotion granted.
April 23, 2010	Holmes, Paul Joseph, Cheung, Nick Cst & Sean McGrath Cst., Toronto Police Service	Appeal of Cst. Cheung's conviction. Appeal dismissed.
August 5, 2010	Needham, Ross Sgt., Toronto Police Service	Motion decision. Motion granted as appeal was filed outside limitation period.
November 29, 2010	Aguiar, Brian Cst., Toronto Police Service	Appeal of penalty. Appeal dismissed.
December 10, 2010	Chan, Gregory Sgt., Toronto Police Service	Appeal of penalty. Appeal allowed in part. Penalty varied to reduction in rank.

2010
HEARING ACTIVITY CHART



Summary of Statutory Appeals and Judicial Reviews

The following is a list of Commission decisions that were subject to statutory appeals, judicial reviews and applications decided in 2010. The decisions can be found at: www.canlii.org/on.

PARTIES	COURT	OUTCOME
Toronto Police Association v. OCCPS	Divisional Court of Ontario	Application for judicial review dismissed, with costs
D'Arcy Ferns v. OCCPS, et al.	Divisional Court of Ontario	Application for judicial review dismissed
Anastasia Greene v. OCCPS, et al.	Ontario Superior Court of Justice	Action for damages dismissed

First Nations Policing

The Constitution Act, 1867 assigned responsibility for the administration of justice to the provinces. Constitutionally and legislatively, Ontario is responsible for the delivery of policing services in all parts of the province, including on First Nations reserves and territories.

In 1975, the Task Force on Policing led to the establishment of a tripartite arrangement for funding the Ontario First Nations Policing Agreement. The Ontario Provincial Police administer the program and provide support. There has been a gradual transfer of administrative responsibility from the OPP to First Nations governing authorities. Some of the functions, which previously had been the exclusive responsibility of the OPP, have become jointly administered; others have been assumed completely by First Nations.

Section 54(1) of the *Act*, states, "With the Commission's approval, the Commissioner may appoint a First Nations Constable to perform specific duties." Section 54(2) of the *Act* states, "If the specified duties of a First Nations Constable relate to a reserve as defined in the Indian Act (Canada), the appointment also requires the approval of the reserve's governing authority or band council."

First Nations Constables are responsible for enforcing provincial and federal laws and band bylaws in First Nations territories.

In 2010, there were 573 First Nations Constables serving. During the year, the Commission approved 43 First Nations Constable appointments.